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AMENDMENTS TO LB 1021

- 1           1. Insert the following new sections:
- 2           "Sec. 61. Section 71-3503, Reissue Revised Statutes of
- 3 Nebraska, is amended to read:
- 4           71-3503. For purposes of the Radiation Control Act,
- 5 unless the context otherwise requires:
- 6           (1) Radiation means ionizing radiation and nonionizing
- 7 radiation as follows:
- 8           (a) Ionizing radiation means gamma rays, X-rays, alpha
- 9 and beta particles, high-speed electrons, neutrons, protons, and
- 10 other atomic or nuclear particles or rays but does not include
- 11 sound or radio waves or visible, infrared, or ultraviolet light;
- 12 and
- 13           (b) Nonionizing radiation means (i) any electromagnetic
- 14 radiation which can be generated during the operations of
- 15 electronic products to such energy density levels as to present a
- 16 biological hazard to occupational and public health and safety and
- 17 the environment, other than ionizing electromagnetic radiation, and
- 18 (ii) any sonic, ultrasonic, or infrasonic waves which are emitted
- 19 from an electronic product as a result of the operation of an
- 20 electronic circuit in such product and to such energy density
- 21 levels as to present a biological hazard to occupational and public
- 22 health and safety and the environment;
- 23           (2) Radioactive material means any material, whether
- 24 solid, liquid, or gas, which emits ionizing radiation

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1 spontaneously. Radioactive material includes, but is not limited  
2 to, accelerator-produced material, byproduct material, naturally  
3 occurring material, source material, and special nuclear material;

4 (3) Radiation-generating equipment means any manufactured  
5 product or device, component part of such a product or device, or  
6 machine or system which during operation can generate or emit  
7 radiation except devices which emit radiation only from radioactive  
8 material;

9 (4) Sources of radiation means any radioactive material,  
10 any radiation-generating equipment, or any device or equipment  
11 emitting or capable of emitting radiation or radioactive material;

12 (5) Undesirable radiation means radiation in such  
13 quantity and under such circumstances as determined from time to  
14 time by rules and regulations adopted and promulgated by the  
15 department;

16 (6) Person means any individual, corporation,  
17 partnership, limited liability company, firm, association, trust,  
18 estate, public or private institution, group, agency, political  
19 subdivision of this state, any other state or political subdivision  
20 or agency thereof, and any legal successor, representative, agent,  
21 or agency of the foregoing;

22 (7) Registration means registration with the department  
23 pursuant to the Radiation Control Act;

24 (8) Department means the Department of Health and Human  
25 Services Regulation and Licensure;

26 (9) Coordinator means the Director of Regulation and  
27 Licensure;

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1                   (10) Council means the radiation advisory council  
2 provided for in section 71-3506;

3                   (11) Electronic product means any manufactured product,  
4 device, assembly, or assemblies of such products or devices which,  
5 during operation in an electronic circuit, can generate or emit a  
6 physical field of radiation;

7                   (12) License means:

8                   (a) A general license issued pursuant to rules and  
9 regulations adopted and promulgated by the department without the  
10 filing of an application with the department or the issuance of  
11 licensing documents to particular persons to transfer, acquire,  
12 own, possess, or use quantities of or devices or equipment  
13 utilizing radioactive materials;

14                   (b) A specific license, issued to a named person upon  
15 application filed with the department pursuant to the Radiation  
16 Control Act and rules and regulations adopted and promulgated  
17 pursuant to the act, to use, manufacture, produce, transfer,  
18 receive, acquire, own, or possess quantities of or devices or  
19 equipment utilizing radioactive materials;

20                   (c) A license issued to a radon measurement specialist,  
21 radon measurement technician, radon mitigation specialist, radon  
22 mitigation technician, radon measurement business, or radon  
23 mitigation business; or

24                   (d) A license issued to a medical radiographer or limited  
25 radiographer;

26                   (13) Byproduct material means:

27                   (a) Any radioactive material, except special nuclear

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1 material, yielded in or made radioactive by exposure to the  
2 radiation incident to the process of producing or utilizing special  
3 nuclear material; and

4 (b) The tailings or wastes produced by the extraction or  
5 concentration of uranium or thorium from any ore processed  
6 primarily for its source material content, including discrete  
7 surface wastes resulting from uranium or thorium solution  
8 extraction processes. Underground ore bodies depleted by such  
9 solution extraction operations do not constitute byproduct  
10 material;

11 (14) Source material means:

12 (a) Uranium or thorium or any combination thereof in any  
13 physical or chemical form; or

14 (b) Ores which contain by weight one-twentieth of one  
15 percent or more of uranium, thorium, or any combination thereof.  
16 Source material does not include special nuclear material;

17 (15) Special nuclear material means:

18 (a) Plutonium, uranium 233, or uranium enriched in the  
19 isotope 233 or in the isotope 235 and any other material that the  
20 United States Nuclear Regulatory Commission pursuant to the  
21 provisions of section 51 of the federal Atomic Energy Act of 1954,  
22 as amended, determines to be special nuclear material but does not  
23 include source material; or

24 (b) Any material artificially enriched by any material  
25 listed in subdivision (15) (a) of this section but does not include  
26 source material;

27 (16) Users of sources of radiation means:

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1           (a)     Physicians     using     radioactive     material     or  
2     radiation-generating equipment for human use;

3           (b)     Natural     persons     using     radioactive     material     or  
4     radiation-generating equipment for education, research, or  
5     development purposes;

6           (c)     Natural     persons     using     radioactive     material     or  
7     radiation-generating equipment for manufacture or distribution  
8     purposes;

9           (d)     Natural     persons     using     radioactive     material     or  
10     radiation-generating equipment for industrial purposes; and

11          (e)     Natural     persons     using     radioactive     material     or  
12     radiation-generating equipment for any other similar purpose;

13          (17) Civil penalty means any monetary penalty levied on a  
14     licensee or registrant because of violations of statutes, rules,  
15     regulations, licenses, or registration certificates but does not  
16     include criminal penalties;

17          (18) Closure means all activities performed at a waste  
18     handling, processing, management, or disposal site, such as  
19     stabilization and contouring, to assure that the site is in a  
20     stable condition so that only minor custodial care, surveillance,  
21     and monitoring are necessary at the site following termination of  
22     licensed operation;

23          (19) Decommissioning means final operational activities  
24     at a facility to dismantle site structures, to decontaminate site  
25     surfaces and remaining structures, to stabilize and contain  
26     residual radioactive material, and to carry out any other  
27     activities to prepare the site for postoperational care;

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1                   (20) Disposal means the permanent isolation of low-level  
2 radioactive waste pursuant to the Radiation Control Act and rules  
3 and regulations adopted and promulgated pursuant to such act;

4                   (21) Generate means to produce low-level radioactive  
5 waste when used in relation to low-level radioactive waste;

6                   (22) High-level radioactive waste means:

7                   (a) Irradiated reactor fuel;

8                   (b) Liquid wastes resulting from the operation of the  
9 first cycle solvent extraction system or equivalent and the  
10 concentrated wastes from subsequent extraction cycles or the  
11 equivalent in a facility for reprocessing irradiated reactor fuel;  
12 and

13                   (c) Solids into which such liquid wastes have been  
14 converted;

15                   (23) Low-level radioactive waste means radioactive waste  
16 not defined as high-level radioactive waste, spent nuclear fuel, or  
17 byproduct material as defined in subdivision (13)(b) of this  
18 section;

19                   (24) Management of low-level radioactive waste means the  
20 handling, processing, storage, reduction in volume, disposal, or  
21 isolation of such waste from the biosphere in any manner, except  
22 the commercial disposal of low-level radioactive waste in a  
23 disposal facility, designated by the Central Interstate Low-Level  
24 Radioactive Waste Compact Commission;

25                   (25) Source material mill tailings or mill tailings means  
26 the tailings or wastes produced by the extraction or concentration  
27 of uranium or thorium from any ore processed primarily for its

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1 source material content, including discrete surface wastes  
2 resulting from underground solution extraction processes, but not  
3 including underground ore bodies depleted by such solution  
4 extraction processes;

5 (26) Source material milling means any processing of ore,  
6 including underground solution extraction of unmined ore, primarily  
7 for the purpose of extracting or concentrating uranium or thorium  
8 therefrom and which results in the production of source material  
9 and source material mill tailings;

10 (27) Spent nuclear fuel means irradiated nuclear fuel  
11 that has undergone at least one year of decay since being used as a  
12 source of energy in a power reactor. Spent nuclear fuel includes  
13 the special nuclear material, byproduct material, source material,  
14 and other radioactive material associated with fuel assemblies;

15 (28) Transuranic waste means radioactive waste containing  
16 alpha-emitting transuranic elements, with radioactive half-lives  
17 greater than five years, in excess of one hundred nanocuries per  
18 gram;

19 (29) Licensed practitioner means a person licensed to  
20 practice medicine, dentistry, podiatry, chiropractic, osteopathic  
21 medicine and surgery, or as an osteopathic physician;

22 (30) X-ray system means an assemblage of components for  
23 the controlled production of X-rays, including, but not limited to,  
24 an X-ray high-voltage generator, an X-ray control, a tube housing  
25 assembly, a beam-limiting device, and the necessary supporting  
26 structures. Additional components which function with the system  
27 are considered integral parts of the system;

1           (31) Limited radiographer means a person licensed to  
2 practice medical radiography pursuant to subsection (2) of section  
3 71-3515.01. Limited radiographer does not include a person  
4 certified under section 71-176.01;

5           (32) Medical radiographer means a person licensed to  
6 practice medical radiography pursuant to subsection (1) of section  
7 71-3515.01;

8           (33) Medical radiography means the application of  
9 radiation to humans for diagnostic purposes, including, but not  
10 limited to, adjustment or manipulation of X-ray systems and  
11 accessories including image receptors, positioning of patients,  
12 processing of films, and any other action that materially affects  
13 the radiation dose to patients; ~~and~~

14           (34) Licensed facility operator means any person or  
15 entity who has obtained a license under the Low-Level Radioactive  
16 Waste Disposal Act to operate a facility, including any person or  
17 entity to whom an assignment of a license is approved by the  
18 Department of Environmental Quality; and

19           (35) Deliberate misconduct means an intentional act or  
20 omission by a person that (a) would cause a licensee, registrant,  
21 or applicant for a license or registration to be in violation of  
22 any rule, regulation, or order of or any term, condition or  
23 limitation of any license issued by the department under the  
24 Radiation Control Act or (b) constitutes a violation of a  
25 requirement, procedure, instruction, contract, purchase order, or  
26 policy under the Radiation Control Act of a licensee, registrant,  
27 applicant for a license or registration, or contractor or



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1 subcontractor of a licensee or registrant or applicant for a  
2 license or registration.

3           Sec. 63. Section 71-3508.03, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5           71-3508.03.     (1) The department shall establish by rule  
6 and regulation annual fees for the radioactive materials licenses,  
7 for inspections of radioactive materials, for the registration and  
8 inspection of radiation-generating equipment and other sources of  
9 radiation, and for radon measurement and mitigation licenses and  
10 inspections of radon mitigation systems installations under the  
11 Radiation Control Act. The annual fee for registration and  
12 inspection of X-ray radiation generating equipment used to diagnose  
13 conditions in humans or animals shall not exceed seventy dollars  
14 per X-ray machine. The department shall also establish by rule and  
15 regulation additional fees for environmental surveillance  
16 activities performed by the department to assess the radiological  
17 impact of activities conducted by licensees and registrants. Such  
18 activities shall not duplicate surveillance programs approved by  
19 the federal Nuclear Regulatory Commission and conducted by entities  
20 licensed by such commission.     ~~7 except that the annual fee for~~  
21 ~~registration and inspection of X-ray radiation-generating equipment~~  
22 ~~shall not exceed seventy dollars per X-ray machine. In determining~~  
23 ~~such fees, the department shall, as an objective, obtain sufficient~~  
24 ~~funds from the fees to pay for a portion of the direct and indirect~~  
25 ~~costs of administering the act without loss or reduction of the~~  
26 ~~General Fund allocation to the department. No fee shall exceed the~~  
27 ~~actual cost to the department for licensure, inspection, or~~

1 ~~registration administering the act.~~ The department may also  
2 ~~contract with a registrant, a licensee, another state, or a federal~~  
3 ~~agency to partially or fully recover the cost of administering the~~  
4 ~~act.~~ The fees collected shall be ~~deposited in~~ remitted to the  
5 State Treasurer for credit to the Department of Health and Human  
6 Services Regulation and Licensure Cash Fund and shall be used  
7 solely for the purpose of defraying the direct and indirect costs  
8 of administering the act. The department shall collect such fees.  
9 ~~The cost of environmental surveillance activities performed by the~~  
10 ~~department to assess the radiological impact of activities~~  
11 ~~conducted by licensees and registrants shall be in addition to the~~  
12 ~~annual fees.~~

13 (2) The department may, upon application by an interested  
14 person or on its own initiative, grant such exemptions from the  
15 requirements of this section as it determines are in the public  
16 interest. Applications for exemption under this subsection may  
17 include, but shall not be limited to, the use of licensed materials  
18 for educational or noncommercial displays or scientific  
19 collections.

20 (3) When a registrant or licensee fails to pay the  
21 applicable fee, the department may suspend or revoke the  
22 registration or license or may issue an appropriate order.

23 Sec. 64. (1) Any licensee, registrant, applicant for a  
24 license or registration, employee of a licensee or registrant,  
25 contractor or subcontractor to a licensee, registrant, or applicant  
26 for a license or registration, or employee of any contractor or  
27 subcontractor to a licensee, registrant, or applicant for a license

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1 or registration, who knowingly provides to any licensee,  
2 registrant, applicant, contractor, or subcontractor any components,  
3 equipment, materials, or other goods or services that relate to a  
4 licensee's, registrant's, or applicant's activities covered by the  
5 Radiation Control Act, shall not (a) engage in deliberate  
6 misconduct that causes or would have caused, if not detected, a  
7 licensee, registrant, or applicant to be in violation of any  
8 regulation or order or any term, condition, or limitation of any  
9 license or registration issued by the department or (b)  
10 intentionally submit to the department, a licensee, or registrant,  
11 or a licensee's, registrant's, or applicant's contractor or  
12 subcontractor, information that the person submitting the  
13 information knows to be incomplete or inaccurate in some respect  
14 material to the department.

15 (2) Any person who violates this section is subject to  
16 section 71-3517.

17 Sec. 67. Section 71-3517, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19 71-3517. (1) Any person who violates any of the  
20 provisions of the Radiation Control Act shall be guilty of a Class  
21 IV misdemeanor.

22 (2) In addition to the penalty provided in subsection (1)  
23 of this section, any person who violates any provision of the  
24 Radiation Control Act or any rule, regulation, or order issued  
25 pursuant to such act or any term, condition, or limitation of any  
26 license or registration certificate issued pursuant to such act  
27 shall be subject to:

1           (a) License revocation, suspension, modification,  
2 condition, or limitation;

3           (b) The imposition of a civil penalty; or

4           (c) The terms of any appropriate order issued by the  
5 department.

6           (3) Whenever the department proposes to subject a person  
7 to the provisions of subsection (2) of this section, the department  
8 shall notify the person in writing (a) setting forth the date,  
9 facts, and nature of each act or omission with which the person is  
10 charged, (b) specifically identifying the particular provision or  
11 provisions of the section, rule, regulation, order, license, or  
12 registration certificate involved in the violation, and (c) of the  
13 sanction or order to be imposed. If a civil penalty is imposed,  
14 the notice shall include a statement that it can be collected by  
15 civil action. of the time, date, and place at which a full and  
16 fair hearing will be had on such charge, (d) that the department  
17 may revoke, suspend, modify, condition, or limit a license, impose  
18 a civil penalty, or enter an appropriate order, and (e) that upon  
19 failure to pay the civil penalty, if any, subsequently determined  
20 by the department, the penalty may be collected by civil action.  
21 The notice shall be delivered to each alleged violator ~~not less~~  
22 ~~than ten days before the time set for the hearing~~ by personal  
23 service, by certified or registered mail to his or her last-known  
24 address, or by publication. Notice by publication shall only be  
25 made if personal service or service by mail cannot be effectuated.  
26 The sanction or order in the notice shall become final thirty days  
27 after the mailing of the notice unless the applicant, registrant,

1 or licensee, within the thirty-day period, requests, in writing, a  
2 hearing before the department. If the notice is served by personal  
3 service or publication, the sanction or order shall become final  
4 thirty days after completion of such service unless the applicant,  
5 registrant, or licensee, within the thirty-day period, requests, in  
6 writing, a hearing before the department.

7           (4) Hearings held pursuant to subsection (3) of this  
8 section shall be held in accordance with rules and regulations  
9 adopted and promulgated by the department and shall provide for the  
10 alleged violator to present such evidence as may be proper.  
11 Witnesses may be subpoenaed by either party and shall be allowed  
12 fees at a rate prescribed by the rules and regulations of the  
13 department. A full and complete record shall be kept of the  
14 proceedings.

15           (5) Following the hearing, the director shall determine  
16 whether the charges are true or not, and if true, the director may  
17 (a) issue a declaratory order finding the charges to be true, (b)  
18 revoke, suspend, modify, condition, or limit the license, (c)  
19 impose a civil penalty in an amount not to exceed ten thousand  
20 dollars for each violation, or (d) enter an appropriate order. If  
21 any violation is a continuing one, each day of such violation shall  
22 constitute a separate violation for the purpose of computing the  
23 applicable civil penalty and the amount of the penalty shall be  
24 based on the severity of the violation. A copy of such decision  
25 setting forth the finding of facts and the particular reasons upon  
26 which it is based shall be sent by either certified or registered  
27 mail to the alleged violator. The decision may be appealed, and

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1 the appeal shall be in accordance with the Administrative Procedure  
2 Act.

3 (6) Any civil penalty assessed and unpaid under  
4 subsection (5) of this section shall constitute a debt to the State  
5 of Nebraska which may be collected in the manner of a lien  
6 foreclosure or sued for and recovered in any proper form of action  
7 in the name of the State of Nebraska in the district court of the  
8 county in which the violator resides or owns property. The  
9 department shall, within thirty days from receipt, transmit any  
10 collected civil penalty to the State Treasurer for deposit in the  
11 permanent school fund.

12 Sec. 68. Section 71-3519, Revised Statutes Supplement,  
13 2001, is amended to read:

14 71-3519. Sections 71-3501 to 71-3519 and section 64 of  
15 this act shall be known and may be cited as the Radiation Control  
16 Act.".

17 2. Renumber the remaining sections and correct the  
18 repealer and internal references accordingly.